Supreme Court, U.S.
FILED

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No.

In the Supreme Court of the United States

AMERICAN TRUCKING ASSOCIATIONS, INC., *ET AL.*,

Petitioners,

v.

STATE OF OREGON, DEPARTMENT OF TRANSPORTATION, *ET AL.*,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Oregon

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a flat fee imposed by the State of Oregon upon commercial vehicles conducting interstate operations violates the Commerce Clause of the United States Constitution.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The parties to the proceeding in the Supreme Court of Oregon were petitioners American Trucking Associations, Inc.; CRST, Inc.; USF Reddaway, Inc.; Kenneth E. Mansigh Trucking, Inc.; Veneer Chip Transport, Inc.; and respondents State of Oregon, Department of Transportation; Grace Crunican, in her capacity as Director of the Oregon Department of Transportation; and AAA Oregon/Idaho.

Petitioner American Trucking Associations, Inc., has no parent corporation and there is no publicly held company owning 10% or more of its stock. Petitioner CRST, Inc. has changed its name to CRST Van Expedited, Inc. and is a wholly owned subsidiary of CRST International, Inc, which is not publicly held. Petitioner Kenneth E. Mansigh Trucking, Inc., has no parent corporation and there is no publicly held company owning 10% or more of its stock. Petitioner Veneer Chip Transport, Inc., has no parent corporation and there is no publicly held company owning 10% or more of its stock. Petitioner USF Reddaway, Inc. is a wholly-owned subsidiary of YRC Regional Transportation, Inc., which in turn is a wholly-owned subsidiary of YRC Worldwide Inc. No publicly held corporation owns more than 10% of YRC Wordwide Inc.'s stock.

TABLE OF CONTENTS

Page

QUESTION PRESENTED 1

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT ii

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

STATEMENT 2

REASONS FOR GRANTING THE PETITION 10

A. Flat Taxes On Motor Carriers Traveling Interstate Are Inherently Discriminatory 10

1. The structure of an unapportioned flat tax necessarily places interstate taxpayers at a disadvantage 11

2. The decision below conflicts with the holdings of federal courts of appeals and state courts of last resort that empirical evidence is not necessary to demonstrate the discriminatory nature of a flat highway tax 14

3. The Oregon Supreme Court's reliance on *Michigan Public Service Commission* misunderstands this Court's holding and confuses the law 17

TABLE OF CONTENTS
(continued)

Page

4. The Oregon Supreme Court's dismissal of the record evidence of discriminatory effect stated an erroneous legal standard and placed a nearly insuperable burden on taxpayers bringing challenges under the Commerce Clause 20

B. The Decision Below Misunderstood The Significance And Application Of The Commerce Clause Internal Consistency Test 22

1. Unapportioned flat taxes like Oregon's lack internal consistency 22

2. The internal consistency test can be used to determine whether a state tax imposes discriminatory, structural burdens on interstate commerce 24

3. The holding below that a state highway tax cannot violate the internal consistency test because it does not pose the threat of duplicative taxation conflicts with the decisions of federal courts of appeals and other state courts of last resort 26

C. The Question Presented Here Is An Important And Recurring One 27

CONCLUSION 30

TABLE OF AUTHORITIES

Page(s)

Cases

American Trucking Ass'ns, Inc. v. *Goldstein*, 541 A.2d 955 (Md. 1988) 16, 28

American Trucking Ass'ns, Inc. v. *Michigan Public Serv. Comm'n*, 125 S. Ct. 2419 (2005) 9, 17, 18, 19

American Trucking Ass'ns, Inc. v. *Scheiner*, 483 U.S. 266 (1987) ..... *passim*

American Trucking Ass'ns, Inc. v. *Sec'y of Administration*, 613 N.E.2d 95 (Mass. 1993)..... 16, 26, 29

American Trucking Ass'ns, Inc. v. *Sec'y of State*, 595 A.2d 1014 (Me. 1991) 26, 29

American Trucking Ass'ns, Inc. v. *State*, 556 N.W.2d 761 (Wis. Ct. App. 1996)..... 17, 27, 28

American Trucking Ass'ns, Inc. v. *State*, 852 A.2d 142 (N.J. 2004) 16, 25, 26

American Trucking Assn's, Inc. v. *Conway*, 566 A.2d 1335 (Vt. 1989) 28

Armco Inc. v. *Hardesty*, 467 U.S. 638 (1984) 25

Associated Industries of Missouri v. *Lohman*, 511 U.S. 641 (1994) 13

Baldwin v. *G.A.F. Seelig, Inc.*, 294 U.S. 511 (1935) 29

Best & Co. v. *Maxwell*, 311 U.S. 454 (1940) 30

TABLE OF AUTHORITIES
(continued)

Page(s)

Black Beauty Trucking, Inc. v. *Indiana Dept. of State Rev.*, 527 N.E.2d 1163 (Ind. Tax 1988) 16

Camps Newfound/Owatonna, Inc. v. *Town of Harrison*, 520 U.S. 564 (1997) 29

Capitol Greyhound Lines v. *Brice*, 339 U.S. 542 (1950) 12

Commonwealth v. *American Trucking Ass'ns, Inc.*, 746 S.W.2d 65 (Ky. 1988) 16, 26

Complete Auto Transit, Inc. v. *Brady*, 430 U.S. 74 (1977) 9

Government Suppliers Consolidating Serv., Inc. v. *Bayh*, 975 F.2d 1267 (7th Cir. 1992) 16, 26

Maryland v. *Lousiana*, 451 U.S. 725 (1981) 21

Nippert v. *City of Richmond*, 327 U.S. 416 (1946) 11, 12, 13

Oklahoma Tax Comm'n v. *Jefferson Lines*, 514 U.S. 175 (1995) 23, 24

Trailer Marine Transport Corp. v. *Vazquez*, 977 F.2d 1 (1st Cir. 1992) 14, 15

Tyler Pipe Indus., Inc. v. *Washington State Dep't of Rev.*, 483 U.S. 232 (1987) 24

United States v. *Sperry Corp.*, 493 U.S. 52 (1989) 25

West Lynn Creamery, Inc. v. *Healy*, 512 U.S. 186 (1994) 30

TABLE OF AUTHORITIES
(continued)

Page(s)

Statutes and Regulations

28 U.S.C. § 1257 1
Cal. Veh. Code §2502(c) 27
Col. Rev. Stat. Ann. § 42-20-202(1) 27
Conn. Gen. Stat. Ann. § 22a-454(a) 27
Code Del. Reg. 10-400-007 27
Ga. Code § 46-11-4 (i) 27
Iowa Code Ann. § 455B.424(5) 27
Kan. Admin. Regs. 28-31-10(f) 27
Md. Code Ann. Envir. § 7-252(a)(2)(ii) 27
Mich. C.L.A. § 29.473(3) 28
Minn. Stat. Ann. § 221.0355(4) 28
Nev. Admin. Code § 459.9805(1) 28
N.C. Gen. Stat. § 130A-294.1(j) 28
N.Y. ECL § 72-0502 28
Ohio Rev. Code § 4905.80(C)(1) 28
Oregon Revised Statutes:
ORS § 825.474 ..... 1, 2, 3
ORS § 825.480 ..... 1, 22
ORS § 825.480(1) 3
ORS § 825.480(2) 4
ORS § 825.480(4) 3
ORS § 825.480(5) 3

TABLE OF AUTHORITIES
(continued)

Page(s)

Tex. Nat. Res. Code § 113.131 (d)(1) 28
Tex. Nat. Res. Code § 116.072 (c)(1) 28
Wy. Stat. § 37-14-103 28

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the Supreme Court of Oregon (App., *infra*, 1a-22a) is reported at 124 P.3d 1210. The opinion of the Oregon Court of Appeals (App., *infra*, 23a-39a) is reported at 90 P.3d 15. The opinion of the Oregon Circuit Court (App., *infra*, 40a-78a) is unreported.

JURISDICTION

The judgment of the Supreme Court of Oregon was entered on December 15, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Commerce Clause of the United States Constitution provides in relevant part:

> The Congress Shall have the Power * * * To Regulate Commerce * * * among the several States.

Section 825.480 of the Oregon Revised Statutes provides in relevant part:

> (1)(a) In lieu of other fees provided in ORS 825.474, carriers engaged in operating motor vehicles in the transportation of logs, poles, peeler cores or piling may pay annual fees for such operation computed at the rate of six dollars and ten cents for each 100 pounds of declared combined weight.
>
> * * *
>
> (4)(a) In lieu of other fees provided in ORS 825.474, carriers engaged in the operation of motor vehicles equipped with dump bodies and used in the transportation of sand,

gravel, rock, dirt, debris, cinders, asphaltic concrete mix, metallic ores and concentrates or raw nonmetallic products, whether crushed or otherwise, moving from mines, pits or quarries may pay annual fees for such operation computed at the rate of six dollars and five cents for each 100 pounds of declared combined weight.

* * *

(5)(a) In lieu of other fees provided in ORS 825.474, carriers engaged in operating motor vehicles in the transportation of wood chips, sawdust, barkdust, hog fuel or shavings may pay annual fees for such operation computed at the rate of twenty-four dollars and sixty-two cents for each 100 pounds of declared combined weight.

STATEMENT

In *American Trucking Ass'ns, Inc.* v. *Scheiner*, 483 U.S. 266 (1987), this Court held that flat state taxes on motor carriers traveling interstate violate the Commerce Clause of the U.S. Constitution. Such taxes, the Court explained, lack "internal consistency" because, if imposed by every state, they would place interstate commerce at a significant structural disadvantage vis-à-vis carriers confining their operations to a single state. At the same time, the Court added, flat taxes inevitably discriminate in their practical effect against motor carriers that operate interstate because they impose a higher effective per-mile rate on interstate trucks than on vehicles operating only in the taxing state. The Court accordingly concluded that such a flat levy "is unquestionably discriminatory and thus offends the Commerce Clause." *Id.* at 296.

In this case, however, the Oregon Supreme Court upheld a flat tax on motor carriers traveling interstate that, in its pernicious effects, is largely identical to the one struck down in *Scheiner*. In doing so, the Oregon court held (1) that the internal consistency test cannot invalidate taxes on the use of a state's highways and (2) that taxpayers invoking the Com-

merce Clause may not rely on the inherently discriminatory structure of a tax and instead are obligated to adduce empirical evidence that the levy affects their interstate operations in a discriminatory way. That decision plainly departs from this Court's holdings, squarely conflicts with decisions of federal courts of appeals and other state courts of last resort, permits the imposition of discriminatory burdens on interstate commerce, and sows considerable confusion in an already complex area of the law. Further review therefore is warranted.

1. The State of Oregon imposes a tax on heavy trucks that use its highway system, applying the revenue to pay for "constructing and maintaining highways." App., *infra*, 36a. See *id.* at 11a ("proceeds dedicated to Oregon highways"). Most trucks pay a "weight-mile tax," under which a "trucking carrier pays a rate for each mile that its trucks operate on the state's public highways." *Id.* at 25a. See ORS § 825.474. But Oregon also offers carriers of certain commodities – logs, sand and gravel, and wood chips – the option of paying a flat tax in lieu of the weight-mile tax. ORS § 825.480(1), (4), and (5).

For each commodity whose carriers are eligible to make use of the flat-tax option, the state legislature set the annual tax at an amount that it ostensibly "believed to be identical to what a truck of the same weight carrying that commodity would pay in weight-mile tax if it operated as many miles per year as an average truck that carried that commodity" – basing this amount "on the assumption that the truck in question operates *entirely* in Oregon." App., *infra*, 25a (emphasis added). Because the flat tax does not vary according to miles actually traveled, for each commodity there is a "break-even" number of miles; if a truck travels beyond that break-even point in Oregon, the carrier will pay a lower tax under the flat-tax option than it would have paid under the weight-mile alternative. Carriers that pay the flat tax and exceed the break-even point thus obtain what the Oregon Department of